

SIEMENS

PATENT
Attorney Docket No. 2003P08256WOUS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventor:	Klaus Leuschner et al.)	Group Art Unit: 2435
)	
Serial No.:	10/574,168)	Examiner: R. D. Moran
)	
Filed:	06/27/2007)	Confirmation No.: 4156
Title:	METHOD FOR LICENSING AND/OR AUTHORIZING ACCESS TO SOFTWARE MODULES IN A SWITCHING DEVICE		

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APPELLANTS' BRIEF UNDER 37 CFR 41.37

Sir:

This brief is in furtherance of the Notice of Appeal filed in this application on 26 June 2009.

(Please proceed to the following page.)

1. REAL PARTY IN INTEREST - 37 CFR 41.37(c)(1)(i)

The real party in interest in this Appeal is the assignee of the present application, Siemens Aktiengesellschaft.

2. RELATED APPEALS AND INTERFERENCES - 37 CFR 41.37(c)(1)(ii)

There is no other appeal, interference or judicial proceeding that is related to or that will directly affect, or that will be directly affected by, or that will have a bearing on the Board's decision in this Appeal.

3. STATUS OF CLAIMS - 37 CFR 41.37(c)(1)(iii)

Claims canceled: 1 – 9 and 12.

Claims withdrawn but not canceled: None.

Claims pending: 10, 11 and 13 – 25.

Claims allowed: none.

Claims rejected: 10, 11 and 13 – 25.

The claims on appeal are 10, 11 and 13 – 25. A copy of the claims on appeal is attached hereto in the Claims Appendix. Appellants respectfully appeal the final rejection of claims 10, 11 and 13 – 25.

4. STATUS OF AMENDMENTS - 37 CFR 41.37(c)(1)(iv)

In response to the Final Office Action mailed 18 March 2009, on 4 May 2009 Appellants filed a response after final rejection under Rule 116 with proposed amendment to overcome an objection raised with regard to the dependency of claims 11 and 20 - 25. The response also presented argument for traversal of the final rejection as applied to claim 10. The Advisory Action mailed 28 May 2009 indicates entry of the amendment and, as best understood, all of the objections are withdrawn. In the Advisory Action the Examiner also expressed disagreement with four reasons for traversing the rejection of claim 10, the sole independent claim. This appeal

is necessitated because the Examiner's reasons for sustaining the art rejections are unsupportable.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER- 37 CFR 41.37(c)(1)(v)

With reference by page and line number to the detailed description, the following summary describes one or more exemplary embodiments disclosed in the Specification and which are covered by one or more specific claims, but it is to be understood that the claims are not so limited in scope.

With reference to Figure 1, **Independent claim 10** is directed to a method for activating non-licensed software modules among a plurality of software modules resident in a computer-controlled switching device within a communications network. See page 1, lines 5-8. In an example embodiment, a switching device 1 is provided which includes a system database 5 comprising a license database 4. The license database is installed in a storage device (also referenced 4) which is installed in the switching device. See page 7, lines 13 – 17. The license database includes both one or more non-licensed software modules and licensed software modules and license information, the license information resident in the switching device pertaining to each of the software modules. See page 7, line 29 - page 8, line 5; page 8, lines 7 – 9. A portable data medium 10, e.g., a SIM card, is connected to the switching device 1 and an interaction is initiated between the license database 4 and the portable data medium 10 with a cryptographic algorithm to determine whether the storage device 4 and the portable data medium 10 each include matching hardware identification information. See page 8, lines 7 – 16. Next, the matching hardware identification information and license information pertaining to at least one software module is transmitted over a communication link from the switching device 1 to a license manager 2, e.g., via a communication connection 5, which may be geographically remote from the switching device 1. See page 8, line 18 - line 22. The license manager 2 then determines whether license authorization exists for the switching device 1 to use the at least one software module. See page 8, lines 22 – 26. If authorization exists, the license manager then generates a license confirmation 8 via a license reference database having licenses for software modules purchased for the switching device. See page 8, lines 26 – 32. The license confirmation

information is sent to the switching device thereby permitting use of the software module See page 8, lines 26 - page 9, line 2. The license manager 2 may be remotely located from the switching device 1. See, again, page 8, line 18 - line 22.

6. GROUNDS OF REJECTION TO BE REVIEWED UPON APPEAL - 37 CFR 41.37(c)(1)(vi)

The sole ground of rejection to be reviewed on appeal is whether claims 10, 11 and 13 – 25 are anticipated by U.S. 2005/0004873 (Pou).

7. ARGUMENT 37 CFR 41.37(c)(1)(vii)

APPELLANT TRAVERSES ALL REJECTIONS BASED ON THE POU REFERENCE.

Patentability of Each Claim is to be Separately Considered

Appellants urge that, to the extent the claims are separately argued, patentability of each claim should be separately considered. General argument, based on deficiencies in the rejection of independent claim 10 demonstrates patentability of all dependent claims. However, none of the rejected claims stand or fall together because each dependent claim further defines a unique combination that patentably distinguishes over the art of record. For this reason, the Board is requested to consider all argument presented with regard to each dependent claim. Argument demonstrating patentability of each dependent claim is presented under subheadings identifying each claim by number.

7A. REJECTION OF INDEPENDENT CLAIM 10 UNDER SECTION 102 BASED ON THE POU REFERENCE IS IN ERROR.

Any art rejection, whether raised under Section 102 or under Section 103, must still identify all of the claimed features. The following discussion illustrates how the final rejection fails to do so. Claim 10, directed to a method for activating non-licensed software modules

among a plurality of software modules resident in a computer-controlled switching device, requires one or more software modules and "license information pertaining to at least one software module ..." Despite argument previously made of record, the rejection again cites par [0010] of Pou for disclosing this subject matter. However, the "license database" described at par [0010] of Pou is not disclosed as including applicants' recited software module. Recognizing that the Pou reference relates to digital rights management in the music industry (e.g., controlling distribution of content), it is not a surprise that the reference should lack this feature and fail to satisfy the requirements of Section 102.

It also appears that the rejection reads the referenced "user device" as applicants' claimed switching device. Argument has been made of record that this cannot be, but the Final Office Action does not address the deficiency. Specifically, the "user device" of Pou appears to be a device which holds and, perhaps, plays a media file such as music or video. See pars. [0090] and [0010]. There is no basis for reading the switching device of claim 10 on the user device of Pou. Noting that the claimed "switching device" has been read upon Pou's user device, a third deficiency in the rejection is that, with respect to citation of par [0014] in Pou, there is no disclosure of an interaction between the license database and a portable data medium. Rather, the cited paragraph refers to receiving a data file on the user device. It is only the applicants who teach

"initiating an interaction between the license database and the portable data medium ... to determine whether the storage device and the portable data medium each include matching hardware identification information ..."

More specifically, claim 10 requires

"initiating an interaction between the license database and the portable data medium with a cryptographic algorithm ..."

and the reference made to par [0059] of Pou does not meet the terms of the claim recitation, i.e., for interaction with a portable data medium. There is no disclosure of "connecting a portable medium to the switching device ..."

Also, the license database of claim 10 includes

“both one or more non-licensed software modules and licensed software modules and license information, the license information resident in the switching device pertaining to each of the software modules ...”

The foregoing requires that “the license information resident in the switching device” pertains to both **one or more non-licensed software modules** and **licensed software modules** and this is not what the Pou reference discloses. Citation of par [0014] is not supportive of the rejection.

For all of these reasons the rejection of claim 10 must be overturned.

7B. THE REJECTIONS UNDER SECTION 102 OF DEPENDENT CLAIMS 11 AND 13 – 25 BASED ON THE POU REFERENCE ARE ALSO IN ERROR AND THOSE CLAIMS FURTHER DISTINGUISH OVER THE PRIOR ART.

7B(1) CLAIM 13 IS ALLOWABLE UNDER SECTION 102.

In the method of claim 13 the portable medium is a card selected from the group consisting of smart card, chip card and SD/MultiMedia card. The rejection cites par. [0102] of Pou, but that passage does not specify a smart card, a chip card or an SD/MultiMedia card.

7B(2) CLAIM 14 IS ALLOWABLE UNDER SECTION 102.

In the method of claim 14, the hardware identification information is created from an identification number of the license database and information stored on the card. The rejection cites par [0063] of Pou, but it is not seen that any disclosure in that cited passage is relevant and there is no reference therein to a card.

7B(3) CLAIM 15 IS ALLOWABLE UNDER SECTION 102.

In the method according to claim 15, the hardware identification information and the license information transmitted from the switching device to the license manager are encrypted. The rejection cites par [0063] but that passage makes no mention of a licensing manager.

7B(4) CLAIM 17 IS ALLOWABLE UNDER SECTION 102.

In the method of claim 17, the created license confirmation information authorizes operation of the software module in the switching device when the license information for the software module is included in the purchased licenses. Despite citations to pars [0070] and [0099] there is no reference in the Pou disclosure to authorization to operate a software module.

7B(5) CLAIM 18 IS ALLOWABLE UNDER SECTION 102.

In accord with claim 18, the created license confirmation information authorizes a test operation of the software module in the switching device when the license information for the software module is not included in the purchased licenses. Again, despite citations to pars [0070] and [0099], there is no reference in the Pou disclosure to authorization to operate a software module.

7B(6) CLAIM 19 IS ALLOWABLE UNDER SECTION 102.

In the method according to claim 19, the communication connection between the switching device and the license manager is routed via a circuit-switched or a packet switch communication network. Par [0010] is cited to support this rejection, but there is no mention therein of a circuit-switched or a packet switch communication network.

7B(7) CLAIM 20 IS ALLOWABLE UNDER SECTION 102.

In the method of claim 20 the portable medium is a card selected from the group consisting of smart card, chip card and SD/MultiMedia card. The rejection cites par. [0102] of Pou, but that passage does not specify a smart card, a chip card or an SD/MultiMedia card.

7B(8) CLAIM 21 IS ALLOWABLE UNDER SECTION 102.

In the method according to claim 21, the hardware identification information and the license information transmitted from the switching device to the license manager are encrypted. The rejection cites par [0063] but that passage makes no mention of a licensing manager.

7B(9) CLAIM 22 IS ALLOWABLE UNDER SECTION 102.

In the method of claim 22, the license manager is a server and is networked with the switching device via a communication network. It is not clear as to the basis upon which the rejection of this claim is founded. Removal of the rejection is requested because the prior art does not disclose a switching device.

7B(10) CLAIM 23 IS ALLOWABLE UNDER SECTION 102.

In the method of claim 23, the created license confirmation information authorizes operation of the software module in the switching device when the license information for the software module is included in the purchased licenses. Despite citations to pars [0070] and [0099] there is no reference in the Pou disclosure to authorization to operate a software module.

7B(11) CLAIM 24 IS ALLOWABLE UNDER SECTION 102.

According to claim 24, the created license confirmation information authorizes a test operation of the software module in the switching device when the license information for the software module is not included in the purchased licenses. Again, despite citations to pars [0070] and [0099], there is no reference in the Pou disclosure to authorization to operate a software module.

7B(12) CLAIM 25 IS ALLOWABLE UNDER SECTION 102.

In the method according to claim 25, the communication connection between the switching device and the license manager is routed via a circuit-switched or a packet switch communication network. Par [0010] is cited to support this rejection, but there is no mention therein of a circuit-switched or a packet switch communication network.

7C. CONCLUSIONS

Argument has been presented to demonstrate that the rejections under Section 102 are deficient and that the dependent claims further distinguish over the prior art. The Examiner has argued rejections when claimed features are absent from and inconsistent with the references and not suggested by the prior art. For the detailed reasons presented, there is cannot be a prima facie case of obviousness and none of the rejections can be sustained. All of the rejections should be overturned and all of the claims should be allowed.

8. APPENDICES

An appendix containing a copy of the claims involved in this appeal is provided herewith. No evidence appendix or related proceedings appendix is provided because no such evidence or related proceeding is applicable to this appeal.

Respectfully submitted,

Dated: AUG. 13, 2009

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9. APPENDIX OF CLAIMS ON APPEAL

10. A method for activating non-licensed software modules among a plurality of software modules resident in a computer-controlled switching device within a communications network, comprising:

providing a switching device including a system database comprising a storage device;
installing a license database in the switching device, the license database including both one or more non-licensed software modules and licensed software modules and license information, the license information resident in the switching device pertaining to each of the software modules;

connecting a portable data medium to the switching device and initiating an interaction between the license database and the portable data medium with a cryptographic algorithm to determine whether the storage device and the portable data medium each include matching hardware identification information;

next transmitting determined matching hardware identification information and license information pertaining to at least one software module over a communication link from the switching device to a license manager, the license manager then determining whether license authorization exists for the switching device to use the at least one software module;

the license manager then generating a license confirmation via a license reference database having licenses for software modules purchased for the switching device; and

sending the license confirmation information to the switching device thereby permitting use of the software module,

wherein the license manager is remotely located from the switching device.

11. The method according to claim 10, wherein an asymmetrical encryption is used in the interaction between the license database and the portable medium.

13. The method according to claim 11, wherein the portable medium is a card selected from the group consisting of smart card, chip card and SD/MultiMedia card.

14. The method according to claim 13, wherein the hardware identification information is created from a identification number of the license database and information stored on the card.

15. The method according to claim 13, wherein the hardware identification information and the license information transmitted from the switching device to the license manger are encrypted.

16. The method according to claim 15, wherein the license manager is a server and is networked with the switching device via a communication network.

17. The method according to claim 16, wherein the created license confirmation information authorizes operation of the software module in the switching device when the license information for the software module is included in the purchased licenses.

18. The method according to claim 16,
wherein the created license confirmation information authorizes a test operation of the software module in the switching device when the license information for the software module is not included in the purchased licenses, and
wherein the test operation is for a period of time.

19. The method according to claim 16, wherein the communication connection between the switching device and the license manager is routed via a circuit-switched or a packet switch communication network.

20. The method according to claim 1, wherein the portable medium is a card selected from the group consisting of smart card, chip card and SD/MultiMedia card.

21. The method according to claim 1, wherein the hardware identification information and the license information transmitted from the switching device to the license manager are encrypted.

22. The method according to claim 1, wherein the license manager is a server and is networked with the switching device via a communication network.

23. The method according to claim 1, wherein the created license confirmation information authorizes an operation of the software module in the switching device when the license information for the software module is included in the purchased licenses.

24. The method according to claim 1,
wherein the created license confirmation information authorizes a test operation of the software module in the switching device when the license information for the software module is not included in the purchased licenses, and
wherein the test operation is for a period of time.

25. The method according to claim 1, wherein the communication connection between the switching device and the license manager is routed via a circuit-switched or a packet switch communication network.

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10. EVIDENCE APPENDIX - 37 CFR 41.37(c) (1) (ix)

None

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11. RELATED PROCEEDINGS APPENDIX - 37 CFR 41.37(c) (1) (x)

None